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ABSTRACT

This guide, prepared to assist owners and managers of proprietary schools in Texas in applying for and obtaining approval by the Texas Education Agency, provides guidelines and minimum standards of practice for proprietary school operation. First, the guidelines are discussed in terms of definitions, exemptions, general provisions, certificates of approval, and permits for representatives. Focus of the second section is on minimum standards for the operation of proprietary schools and includes personnel, admission requirements, conduct policy, tuition and fees, cancellation and refund policy, instructional program data, advertising, minimum progress and attendance standards, financial stability, maximum pupil-teacher ratio, and records. The third section deals with hearings before the Commissioner of Education and covers topics, such as nature of hearings and appeals, service of pleadings, prehearing conference, notice of hearing, order of procedure at hearing, reporter, subpoenas, proposal for decisions, and motions for rehearing. Then follows a section on appeals to the State Board of Education for contested cases arising under the Texas Proprietary School Act and includes procedure for appeal, testimony and evidence, decisions, and rehearing. The last section covers the Texas Proprietary School Act, including general provisions, general powers and duties, authorized operation of schools, appeal, class action suits, and funding. (EM)

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# Guidelines and Minimum Standards for Operation of Texas Proprietary Schools

TEXAS EDUCATION AGENCY
DIVISION OF PROPRIETARY SCHOOLS AND VETERANS EDUCATION
AUSTIN, TEXAS

November 1977
Revised

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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# GUIDELINES AND MINIMUM STANDARDS

# FOR OPERATION OF

# TEXAS PROPRIETARY SCHOOLS

DIVISION OF PROPRIETARY SCHOOLS AND VETERANS EDUCATION
TEXAS EDUCATION AGENCY
201 East Eleventh Street
AUSTIN, TEXAS 78701

NOVEMBER 1977
REVISED

BULLETIN 739

A Guide for Proprietary Schools Applying for Certificates of Approval and Permits for Representatives and Minimum Standards for Operation of Proprietary Schools Under the Texas Education Code, Title 2, Chapter 32, Regulating Proprietary Schools and Their Representatives

## COMPLIANCE WITH TITLE VI, CIVIL RIGHTS ACT OF 1964; TITLE IX OF THE EDUCATION AMENDMENTS OF 1972; AND THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; and with specific requirements of the Modified Court Order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

(1) acceptance policies on student transfers from other school districts;

(2) operation of school bus routes or runs on a non-segregated basis;

(3) non-discrimination in extracurricular activities and the use of school facilities;

(4) non-discriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;

(5) enrollment and assignment of students without discrimination on the basis of race, color, national origin, or sex;

(6) non-discriminatory practices relating to the use of a student's first language; and

(7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act and/or Title IX of the Education Amendments of 1972 is found, the findings are reported to the Office for Civil Rights, Department of Health, Education and Welfare.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

## FOREWORD

The Texas Proprietary School Act enacted by the 62nd Legislature, codified in Title 2, Chapter 32, Texas Education Code, provides for the approval by the Texas Education Agency of all schools which come under the purview of the law.

This guide has been prepared to assist owners and managers of proprietary schools in applying for and obtaining approval under the law. It also prescribes minimum standards of practice.

M. L. Brockette
Commissioner of Education

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REVISED

# GUIDELINES AND MINIMUM STANDARDS FOR OPERATION OF TEXAS PROPRIETARY SCHOOLS 226.25.90.020-.030

Rules 226.25.90.020-.080 are promulgated under the authority of Section 32.22, Texas Education Code. The guidelines for proprietary schools were previously covered by rule 226.25.90.010, the adoption by reference of Texas Education Agency Bulletin 739.

## .020 GUIDELINES IN GENERAL

The Texas Education Agency will evaluate each school according to the standards of practice as set forth herein. The complete picture presented by the entire educational, promotional, and ethical structure of the school will receive consideration in its evaluation. The quality of educational programs offered by each school will be judged in terms of the announced policies as set forth in the bulletins, school literature, and application for certificate of approval.

Every effort will be made to evaluate fairly and impartially each school application for approval and each representative permit to solicit students in Texas for the purpose of selling courses of instruction. The Texas Education Agency will endeavor to provide an effective and constructive application of the Law and standards of practice adopted for regulating proprietary schools.

The Texas Education Agency will assist all schools and their directors under its jurisdiction whenever possible in complying with the provisions of the Law and standards of practice. Inquiries or requests for information should be directed to the Division of Proprietary Schools and Veterans Education, Texas Education Agency, Austin, Texas 78701.

## .030 DEFINITIONS

Administrator means the State Commissioner of Education or a person knowledgeable in the administration of regulating proprietary schools, designated by the Commissioner to administer the provisions of this Chapter, and hereinafter referred to as "Administrator."

Date of Notice means the date the notice is mailed by the Administrator.

Director means the person designated by the Administrator to carry out the functions and regulations governing the proprietary schools and hereinafter referred to as "Director" of the Division of Proprietary Schools and Veterans Education.

Division means the Division of Proprietary Schools and Veterans Education of the Texas Education Agency responsible for executing the provisions of the Law, rules, regulations, and standards as contained in this guide and hereinafter referred to as "Division."

Notice to the School means written correspondence sent to the address of record for legal service contained in the application for a certificate of approval.

Owner of a School means:

in the case of a school owned by an individual, that individual;

in the case of a school owned by a partnership, all full, silent, and limited partners;

in the case of a school owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least ten percent (10%) of the total of the issued and outstanding shares.

Person means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

Proprietary School referred to as "school," means any business enterprise operated for a profit, or on a nonprofit basis, which maintains a place of business within the State of Texas, or solicits business within the State of Texas, and which is not specifically exempt by statute and includes those schools which offer or maintain a course or courses of instruction or study; or at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement, except as hereinafter excluded.

Representative means a person employed by the school, whether the school is located within or without the State of Texas, to act as an agent, solicitor, broker, or independent contractor to directly procure students or enrollees for the school by solicitation within or without this State.

School Employee means any person, other than an owner, who directly or indirectly receives compensation from the school for services rendered.

Support or Supported means the primary source and means by which a school derives revenue to perpetuate its operation.

Unearned Tuition means the total, at any given time during the period for which the Certificate of Approval is issued, of the following:

refunds due former students;

the total of all tuition and fees that have been collected or will be collected from students prior to graduation;

the total of any tuition collected in advance from prospective students.

This definition is for application in qualifying for a $5,000 bond.

Change in Ownership of a school means a change in the control of the school. The control of a school is considered to have changed:

in the case of ownership by an individual, when more than fifty percent (50%) of the school has been sold or transferred;

in the case of ownership by a partnership or a corporation, when more than fifty (50%) of the school or of the owning partnership or corporation has been sold or transferred;

when the board of directors, officers, shareholders, or a similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

.040 EXEMPTIONS

The following schools or educational institutions are specifically exempt from the provisions of the Law regulating proprietary schools:

a school or educational institution supported by taxation from either a local or State source;

nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this State, but such schools may choose to apply for a certificate of approval;

a school or training program which offers instruction of purely avocational or recreational subjects as determined by the Administrator;

a course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student;

a course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership;

private colleges or universities which award a recognized baccalaureate, or higher degree, and which maintain and operate educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or State source;

a school which is otherwise regulated and approved under and pursuant to any other law of the State;

aviation schools or instructors approved by and under the supervision of the Federal Aviation Administration;

a school which offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations, or medical college admissions tests.

Schools offering a course or courses of special study or instruction financed and/or subsidized by local, State or Federal funds or any person, firm, association, or agency other than the student involved, on a contract basis and having a closed enrollment may apply to the Administrator for exemption of such course or courses from the provisions of the Law.

.050 GENERAL PROVISIONS

No proprietary school shall maintain, advertise, solicit for, or conduct any course of instruction in Texas without obtaining a certificate of approval from the Administrator.

Any proprietary business, technical, vocational or home study school, not exempt, desiring to operate in the State of Texas or do business in the State shall make written application to the Administrator for a certificate of approval. Schools exempt from the provisions of the Law shall make written application to the Administrator for a request for exemption. Schools desiring renewal of certificate of approval shall make application at least thirty (30) days prior to the expiration date of the certificate of approval. A certificate of approval is nontransferable.

A person or persons purchasing an approved proprietary school shall comply with all the requirements for securing an original approval. In addition, a copy of the Sales Contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership of the school must be submitted to the Agency. The purchaser will accept responsibility for all refund liabilities.

Application forms and other pertinent data shall be submitted at least thirty (30) days prior to change in ownership.

Exempted schools may make application for a certificate of approval and upon approval and issuance, shall be subject to the provisions and regulations applicable to nonexempt schools during the period of approval. Applications for certificates of approval shall be made on forms provided by the Administrator.

Any representative of a proprietary school who directly procures students or enrollees for the school by solicitation within or without this State shall apply for registration with the Administrator. The registration, unless revoked for just cause, shall be valid for a period not to exceed twelve (12) calendar months. Renewal of registration shall be made on renewal applications provided by the Administrator.

The Administrator may, for good cause, suspend solicitation, enrollment, or reenrollment of students.

.060 CERTIFICATES OF APPROVAL AND PERMITS FOR REPRESENTATIVES

Requirements for Issuance of Certificate of Approval

The Director may approve the applying school and issue a certificate of approval provided the applicant school is found upon investigation to have satisfactorily met the Minimum Standards for Proprietary Schools as set forth in this Guide and have provided assurance and evidence of meeting the following criteria:

the courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum or instruction are offered;

there is in the school adequate space, equipment, instructional material and instructor personnel to provide training of good quality;

educational and experience qualifications of directors, administrators and instructors are adequate;

the school maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school for previous education and training, with the new training period shortened where warranted through the use of appropriate skills or achievement tests and the student so notified;

a copy of the course outline; schedule of tuition, fees, refund policy, and other charges; regulations pertaining to absence, grading policy, and rules of operation and conduct will be furnished the student prior to enrollment;

upon completion of training, the student is given a certificate by the school indicating the course and that training was satisfactorily completed;

adequate records as prescribed by the Director are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress and conduct are enforced;

the school complies with all local, city, county, municipal, State and Federal regulations, such as fire, building and sanitation codes;

the school is financially sound and capable of fulfilling its commitments for training;

the school has, maintains, and publishes in its bulletin and enrollment contract, the proper policy for the refund of the unused portion of tuition, fees, and other charges in the event the student enrolled by the school fails to take the course or withdraws or is discontinued therefrom at any time prior to completion;

the school does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation; and

the school does not use a name like or similar to an existing tax supported school in the same area.

Effective Date of Certificate of Approval

The effective date of the Certificate of Approval shall be the date the Certificate is issued. Exceptions will be made only in cases where administrative delay necessitates issuance of the new Certificate subsequent to the expiration of the prior Certificate provided the applicant school was in full compliance with the criteria for approval on the effective date.

Requirements for Issuance of Permits for Representatives

The Director may approve the applying representative and issue a permit provided the applicant representative has satisfactorily supplied evidence of meeting the following criteria:

the representative shall furnish evidence of being a person of good reputation and character; and

the representative shall post a $1,000 bond.

Application Procedures for Certificate of Approval and Representative Permit

Business, technical, trade, and correspondence schools making application for a certificate of approval will complete an application form (DPSVE-001). The following supporting documents shall accompany the application:

personal data form for director, teachers, and staff (DPSVE-002) for each staff member;

school calendar (DPSVE-003);

summary of course information (DPSVE-004) shall be completed for each course;

class schedule;

appropriate bond on the form prescribed by the Administrator. The bond shall be in the penal sum of $25,000 except a bond in the penal sum of $5,000 may be provided if the school submits evidence acceptable to the Administrator that the total unearned tuition of the school will not exceed $5,000 at any given time during the period of the Certificate of Approval (see definition of unearned tuition on page 3 of this publication);

a check or money order made payable to the Texas State Treasurer for statutory fee of $250 which is nonrefundable.

Renewal of Certificate of Approval

Schools desiring renewal of the certificate of approval shall make application at least thirty (30) days prior to the expiration date of the certificate of approval on forms provided by the Director. The following shall be submitted:

evidence of continued bonding;

a check or money order in the amount of $200 made payable to the Texas State Treasurer, which is nonrefundable;

other data necessary to assure that the application is current and correct;

current list of names and addresses of all representatives employed by the school.

Requirements for Issuance of Permit for Representatives

Representatives making application for a representative permit shall complete a representative permit application form (DPSVE-014). The following supporting documents shall accompany the application:

representative permit bond (DPSVE-007) shall be completed; and

a check or money order made payable to the Texas State Treasurer for statutory fee of $20 shall accompany each application, which is nonrefundable.

Renewal of Permits for Representatives

Representatives desiring renewal of representative permit shall make application at least thirty (30) days prior to the expiration date of the

representative permit on forms provided by the Director. The following shall be submitted:

evidence of continued bonding;

a check or money order in the amount of $10 made payable to the Texas State Treasurer, which is nonrefundable; and

other data necessary to assure the representative permit application is current and correct.

Additional Courses

The holder of a certificate of approval may present an application for approval of additional courses to the Director. These applications shall be submitted for approval prior to the effective implementation date.

Application Procedures for Additional Courses

Schools making application for approval of additional courses after the original approval has been granted shall submit a Summary of Course Information (DPSVE-004) for each new course and any relevant additions to the school catalog such as a revised staff roster, personal data forms, equipment inventory, floor plans, and class schedule.

Notification of Issuance or Denial of Certificate of Approval

The Director upon review and consideration of an application for a certificate of approval from each school shall determine the applicant to be acceptable or unacceptable. The Director shall set forth in writing the approval or the reasons for denial of approval.

An applicant whose Certificate of Approval is denied shall have the right of appeal under Subsection E of this chapter. Should the applicant fail to furnish additional evidence or exercise his right of appeal within fifteen (15) days after receipt of notice that the application is unacceptable the notice shall become final based on the evidence then of record.

Revocation of Certificate of Approval

The Administrator may revoke an issued certificate of approval or place reasonable conditions upon the continued approval represented by the certificate. A certificate of approval may be revoked or made conditional if there is reasonable cause to believe that the school is guilty of a violation of the Law or of any rules and regulations for proprietary schools.

Prior to revocation or imposition of conditions upon a certificate of approval, the holder of the certificate shall be notified in writing of the impending action and the grounds for the action.

.070 APPEALS PROCEDURE

For the appeals procedure see rules 226.25.04.010-.048 and 226.25.05.010-.060.

## .080 MINIMUM STANDARDS FOR OPERATION OF PROPRIETARY SCHOOLS

Minimum standards of operation must be maintained by all schools to ensure educational programs of high quality which will be of benefit to the student, the school, and the State. The observance and maintenance of these standards is the responsibility of each school for inherent advantage to the school itself and for the common good of all schools.

Schools desiring issuance and renewal of certificates of approval shall adhere to the following standards:

I. Personnel

A. Director and Administrative Staff Members

1. Each school shall designate one person as the director of the school. The director is responsible for the school program, the organization of classes, the maintenance of the school plant and the maintenance of proper administrative records and all other procedures related to the administration of the school.

2. The director or staff member must be a graduate of an institution of higher learning (college or university) or have sufficient background and training in the area for which he will be responsible.

3. The director or staff member must be a person of good reputation and character.

B. Instructors

1. Instructors shall have specific qualifications as follows:

a. Instructors employed in secretarial, accounting, office training, and modeling and finishing programs shall have:

A baccalaureate degree from an accredited college or university, including a minimum of eighteen semester hours in business subjects or a comparable combination of education and experience acceptable to the Director.

b. Instructors employed in trade-vocational programs, such as radio-TV repair, drafting, auto mechanics, welding, commercial art and design, air conditioning and refrigeration, machinist, appliance or machine repair, and building trades, shall have:

A high school diploma with a minimum of five years of experience as a worker in the field in which they are to teach or be a graduate of a post-secondary technical school with a minimum of three years of working experience in the trade they are to teach or a comparable combination of education and experience acceptable to the Director.

c. Instructors employed in technical programs, such as electronics technology, data processing and computer programming requiring a high degree of technical information, knowledge and skills, shall have:

At least two years of post-secondary education and training in the technical, scientific or mathematical field, preferably with a degree from an accredited college or university or at least three years of occupational experience with one year of recent continuous employment experience in the technical field to be taught or a comparable combination of education and experience acceptable to the Director.

d. Instructors employed in language, art, and music programs requiring academic and professional training shall have:

A baccalaureate degree from an accredited college or university with appropriate area of study or two years post-secondary education and three years experience in the appropriate area of study or a comparable combination of education and experience acceptable to the Director.

e. Instructors employed in religious and theological education programs shall have:

A baccalaureate degree from a recognized institution in the appropriate field of theology or a degree in theology from a recognized theological seminary.

f. Instructors or teachers employed in programs offering high school level courses, Grades 9 through 12, both business and academic, shall have:

At least a baccalaureate degree from an accredited college or university and a major of at least twenty-four semester hours in the area of assignment or a comparable combination of education and experience acceptable to the Director.

g. Instructors employed in paramedical programs such as medical assisting, dental assisting, medical technician, X-ray technician, and practical nursing programs shall have:

Professional qualifications in the area to be taught, preferably with a degree from an accredited college or university, with at least two years recent occupational experience or a comparable amount of education and experience acceptable to the Director. If the job objective for which the course is offered requires licensure or certification, the instructor must hold the license or certificate.

2. The instructor must be a person of good reputation and character.

II. Admission Requirements

A. The school must submit its entrance requirements for each course and have them approved by the Director. Should the entrance requirements include a standardized achievement test, this test shall become a part of the school's application.

B. The school must maintain a written record of the previous education and training of the applicant student which clearly indicates that appropriate credit has been given by the school for previous education and training. The new training period will be shortened where warranted through use of appriate skills or achievement tests and the student so notified. When the training period is shortened, the course cost will be reduced accordingly. This evaluation of previous education shall be accomplished during matriculation. Schools will use Form DPSVE-010 or the equivalent which will become a part of the student's permanent record at the school.

C. Prior to enrollment the school shall furnish each student a copy of the school bulletins and course outlines; schedule of tuition, fees and other charges, refund policy; enrollment contract; and regulations pertaining to absences, grading policy, and rules of operation and conduct. All schools shall use form DPSVE-005.

III. Conduct Policy

A. The school shall submit a copy of the rules and regulations pertaining to conduct for approval.

B. A statement regarding the following shall be submitted:

1. Conditions for dismissal.

2. Conditions for reentrance of those students dismissed for violating the conduct policy.

IV. Tuition and Fees

A. All tuition, fees and other charges shall be stated in the school's application for approval.

B. The school shall submit method(s) of payment that are available to enrolling students. If student financing is available through any form of arrangement(s) or agreement(s) between the school and a lending institution, the complete terms of the arrangement(s) or agreement(s) must be disclosed to the Director. In addition, if any form of financing is available at the school, all charges and the true annual percentage rate and the name(s) and address(es) of the lending institution(s) shall be disclosed to the Director.

C. Students shall not be held liable for any tuition, fees, or other charges not previously disclosed to the Director.

D. Scholarships may be offered provided terms of scholarships are published and disclosed to the Director.

V. Cancellation and Refund Policy

A. Each school must have a cancellation and settlement policy that will permit a potential student to cancel any enrollment agreement or contract within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student.

1. For any student solicited in the home, the "NOTICE OF CANCELLATION" must be in the following form:

a. The "NOTICE OF CANCELLATION" must be attached to the enrollment agreement or contract and easily detachable, printed in 10 point bold face type, and in the same language used in the contract.

b. The "NOTICE OF CANCELLATION" must contain, among other things, the date of the agreement, name and address of school, and the date on which the 72 hour period will expire.

c. The "NOTICE OF CANCELLATION" must be in a form that can be used by the student to notify the school of his desire to cancel by dating, signing the form and mailing or otherwise delivering it to the school's address

shown. The notice left with the student must be in duplicate.

2. If it is established the enrollment of any student was procured as the result of any misrepresentation in advertising, promotional materials of the school, or representation by the owner or representative of the school, the enrollment agreement or contract is cancelled and full refund of all tuition and fees will be due and payable.

B. Each school must maintain a policy for the refund of the unused portion of tuition, fees, and other charges if, after expiration of the 72 hour cancellation privilege, the student fails to enter the course, or withdraws, or is discontinued therefrom at any time prior to completion, and such policy must provide that:

1. Refunds for residence courses will be based on the period of enrollment computed on the basis of course time expressed in clock hours.

2. The effective date of the termination for refund purposes will be the earliest of the following:

   a. the last day of attendance, if the student is terminated by the school;

   b. the date of receipt of written notice from the student;

   c. ten (10) school days following the last date of attendance.

3. If tuition is collected in advance of entrance, and if after expiration of the 72 hour cancellation privilege the student does not enter school, not more than $50 shall be retained by the school.

4. For the student who enters a residence course of not more than 12 months in length and terminates or withdraws, the school may retain $50 of the tuition and fees and the minimum refund of the remaining tuition will be:

   a. during the first week or one-tenth of the course, whichever is less, 90 percent of the remaining tuition;

   b. after the first week or one-tenth of the course, whichever is less, but within the first quarter of the course, 75 percent of the remaining tuition;

c. during the second quarter of the course, 50 percent of the remaining tuition;

d. during the third quarter of the course, 25 percent of the remaining tuition;

e. during the last quarter of the course, the student may be considered obligated for the full tuition.

5. For residence courses more than 12 months in length, the refund shall be applied to each 12 month period, or part thereof separately.

   a. The determining factor as to whether a course is longer than 12 months will be based on the length of the course as taught by the school in the shortest period of time on a regularly scheduled basis.

   b. During the subsequent 12 month periods or the remaining part thereof, the refund will be made based on the quarter of the 12 month period or the remaining period that is less than 12 months.

   c. The number of hours in any period will be determined by the actual hours taught during that period.

6. Refunds of items of extra expense to the student, such as instructional supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges where these items are separately stated and shown in the data furnished the student before enrollment, will be made in a reasonable manner acceptable to the Director.

7. Refunds will be totally consummated within thirty (30) days after the effective date of termination as defined in Item 2 above.

C. For correspondence courses such policy must provide that:

1. Refunds will be computed based on the number of home study lessons in the course.

2. The effective date of termination for refund purposes will be the earliest of the following:

   a. The date of notification to the student if the student is terminated;

   b. The date of receipt of written notice from the student;

c. The end of the third calendar month following the month in which the student's last lesson assignment was received unless notification has been received from the student that he wishes to remain enrolled. (In this event, the written notice from the student will be maintained in the student's permanent file.) Training must be terminated at the end of any three month period in which no lessons are received unless written notice is received from the student during that three month period that he wishes to remain enrolled.

3. If tuition is collected before any lessons have been completed, and if, after expiration of the 72 hour cancellation privilege, the student fails to begin the course, not more than $50 shall be retained by the school.

4. In cases of termination or withdrawal after the student has begun the correspondence course, the school may retain $50 of tuition and fees, and the minimum refund policy must provide that the student will be refunded the pro rata portion of the remaining tuition, fees and other charges that the number of lessons completed and serviced by the school bears to the total number of lessons in the course.

5. Refunds of items of extra expense to the student, such as instructional supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other ancillary miscellaneous charges where these items are separately stated and shown in the data furnished the student before enrollment will be made in a reasonable manner acceptable to the Director.

6. Refunds will be totally consummated within thirty (30) days after the effective date of termination as defined in Section V.C.2. above.

7. Enrollment contracts must specify the amount of time allotted the student to complete the course. If at the end of the specified period the student has not completed the course, he must be terminated and a refund must be totally consummated within thirty (30) days. Should the student desire to reenroll, appropriate credit must be given as outlined in Section II.B. of this Guide.

D. In lieu of the refund policy herein set forth for programs of instruction not regularly offered to the general public, the State Board of Education may, for good cause shown, amend, modify, substitute and/or alter the terms of such policy because of the specialized nature and objective of the subject school's course of instruction.

E. For courses consisting of a combination of home study lessons and residence training, not more than $100 will be retained by the school for those students who fail to enter residence training, unless the school submits affirmative evidence acceptable to the Administrator disclosing the home study lessons are of such quality and content to reasonably assure that the students will achieve the stated objective without the residence training portion of the course.

VI. Instructional Program Data

A. The courses, content and length of instruction shall be of such nature and quality as to assure reasonably that the students will adequately develop the job skills and knowledge necessary for obtaining employment in the occupation for which the instruction is offered.

B. Schools shall not publish in their bulletins or other promotional literature courses which have not been approved by the Director.

C. When a school is approved to offer a course and enrolls students in the course, the school shall maintain sufficient and qualified faculty to teach all subjects for completing the course during the length of time stipulated in the school bulletin regardless of the size of the class.

D. The school shall schedule classes so that the students will be able to complete the course during the length of time stipulated in the school bulletin.

E. If an approved course is discontinued for any reason, the Director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion by reason of the discontinuance of the course. Should the school fail to make arrangements satisfactory to the students and the Director for the completion of their course(s), the full amount of all tuition and fees paid by the students are then due and refundable. If arrangements are not made satisfactory to the students and Director, the refunds must be made no later than thirty (30) days from the date the course was discontinued. Any course discontinued will be removed from the list of approved courses.

F. Upon successful completion of training, the student is to be given a certificate by the school indicating that the course and/or training was satisfactorily completed.

G. No evening school class schedule shall extend beyond a reasonable time.

VII. Advertising

A. Printed bulletins or other promotional information must be specific with respect to training prerequisites for admission to the school's courses, the curricula, the content of courses, and graduation requirements.

B. Schools holding a franchise to offer specialized courses or subjects not available to other schools shall not advertise such courses in such manner as to diminish the value and scope of courses offered by other schools that do not hold such a franchise. Such advertising of special subjects or courses offered under a franchise shall be limited to the subject or courses offered.

C. Schools or representatives shall not use a photograph, cut, engraving, or illustration in bulletins, sales literature, or otherwise, in such a manner as to convey a false impression as to size, importance, or location of the school, equipment, and facilities associated with that school.

D. Schools or representatives shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the writer and without any offer of financial compensation. Such material shall be kept on file and made a permanent record of the school. Such endorsements shall bear the actual name or professional name of student.

E. Schools or representatives shall not make deceptive statements concerning other proprietary school activities in attempting to enroll students.

F. Classified advertising seeking prospective students must appear under "instruction," "education," "training," or a similarly titled classification and shall not be published under any "help wanted" or "employment" classification.

G. Every display type newspaper advertisement, or other advertisement placed by the school or its representatives, through direct mail, radio, television, or directories seeking prospective students, must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

H. All advertisements placed by the school or its representatives seeking prospective students must include and clearly indicate the full and correct name of the school, its address, and the city where the school is located.

I. No advertisements of any type shall use the word "wanted," "help wanted," or the word "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate in any manner that the school has or knows of jobs or employment of any nature available to prospective students; only "Placement Assistance," if offered, may be advertised.

J. No statement or representation shall be made that students will be guaranteed employment while enrolled in the school or that employment will be guaranteed for students after graduation, nor shall any school or representative thereof falsely represent opportunities for employment upon completion of any course of study.

K. No dollar amount or amounts will be quoted in any advertisement as representative or indicative of the earning potential of graduates.

L. No statement shall be made that the school or its courses of instruction have been "accredited" unless the accreditation is that of the appropriate nationally recognized accrediting agency listed by the United States Office of Education.

M. No statement shall be made that the school or its courses of instruction have been "approved" unless the approval can be substantiated by an appropriate certificate of approval issued by the approving agency of the State or Federal Government.

N. Should a placement service be advertised, adequate records will be maintained by those schools advertising such placement service which will reflect employment data. However, no proprietary school shall advertise as an employment agency under the same name or a confusingly similar name or at the same location of the school. No representative shall solicit students for a school through an employment agency.

O. The Director at any time may require that a school furnish proof to the Director of any of its advertising claims. If proof acceptable to the Director cannot be furnished, a retraction of such advertising claims published in the same manner as the claims themselves, must be published by the school and continuation of such advertising shall constitute cause for suspension or revocation of its certificate of approval.

P. If student tuition loans are available at the school, the school may advertise them only with the language "student tuition loans available" in type no larger than that used for the name of the school. This does not preclude disclosure of the institution's eligibility under the various State and Federal loan programs.

Q. Nothing in these guidelines will prohibit release of information to students as required by a Federal agency.

VIII. Minimum Progress and Attendance Standards

A. Progress

1. Appropriate standards must be implemented to ascertain the progress of the students enrolled. Such standards must include:

a. A progress evaluation system on a maximum of six (6) weeks or other intervals acceptable to the Director.

b. Correspondence schools shall maintain on forms approved by the Director a progress evaluation system. This form shall include the date course materials are mailed to the student, the date the lesson assignment is received from the student, the grade on a lesson basis, the instructor's name, and the date graded assignments are mailed or returned to the student. The form will also include a final grade for the course with completion date indicated.

c. The progress evaluation records must be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

2. The progress evaluation policy shall stipulate what is considered failing or unsatisfactory progress. A student who is failing or making unsatisfactory progress will be placed on probation for one month with the date of the action clearly indicated on the appropriate permanent records and the student advised of this action. Students on probation who have not regained a passing average at the end of the probationary period shall be continued only if improvement is shown in comprehension and effort. Exceptions may be made upon the advice of the regular school counselor.

B. Attendance

1. Absence will be charged for a full day when the student attends none of the scheduled classes on that day. A partial day of absence will be charged for any period of absence during or at the end of the day.

2. School holidays such as summer vacation and Christmas holidays, etc. are not considered as days of absence.

3. A student will be terminated when the student is absent in excess of ten (10) consecutive school days.

4. Make-up work will not be authorized for the purpose of removing an absence.

5. Leaves of absence, including military leaves, shall be reasonable in duration and shall not exceed the lesser of (1) thirty school days or (2) sixty calendar days in any six-month period, and shall be for specific and acceptable purposes. The school attendance records will clearly show leave of absence granted. A written request for leave of absence properly dated and signed by both the student and an authorized school official must be placed in the individual student file within one week of the beginning of such leave of absence. If the student fails to return from leave, the student will be automatically terminated, and a refund will be totally consummated within thirty (30) days.

6. Refund computations will be based on actual hours of class attendance. Absences in excess of ten percent (10%) of scheduled class attendance, leaves of absences and school holidays will not be counted as part of the elapsed time for the purpose of calculating a student's refund as outlined in Section V of this guide.

IX. Equipment Requirements

A. The equipment required for instruction shall be determined by the occupational objective. The equipment shall be comparable to that found in business establishments offering employment in the occupation for which the instruction is being offered.

B. The school shall provide adequate equipment in good working order.

C. The school equipment shall be of sufficient quality and quantity to meet the maximum authorized enrollment of any class.

X. School Sponsored Housing

A. Housing endorsed by the school shall comply with all local, city, county, municipal, State, and Federal regulations such as fire, building, and sanitation codes.

B. The school shall inspect proposed housing before endorsement.

XI. Financial Stability

A. The school shall have sufficient finances to establish and carry out a satisfactory program of education on a continuing basis.

B. The prospective owner will furnish the Director with his initial application for a Certificate of Approval, an audited statement of financial position (balance sheet) in a form consistent with generally accepted accounting principles as prescribed by the Administrator and prepared by an independent Public Accountant or Certified Public Accountant. The prospective owner will also furnish such other evidence as may be deemed appropriate by the Administrator to establish financial stability.

C. Each certificated school will furnish annually acceptable audited financial statements prepared by an independent Public Accountant or Certified Public Accountant not later than 120 days from the close of the school's fiscal year. These statements will be in a form consistent with generally accepted accounting principles as prescribed by the Administrator and must include the following:

1. Statement of financial position (balance sheet)

2. Statement of results of operation (statement of income and retained earnings)

3. Statement of changes in financial position (statement of source and application of funds).

New schools will submit audited financial statements at the end of their first year of operation. After the first year of operation, exceptions to the requirement for audited financial statements may be made for the following schools:

(a) Schools whose gross annual income from student tuition and fees is $20,000 or less, or

(b) Schools which do not collect more than one month's tuition and fees in advance from more than 10 students at any given time.

Such schools must submit annual financial statements as set forth in Section C. 1, 2, and 3 above; however, they need not be audited by the Public Accountant or Certified Public Accountant who prepared the statements, and no opinion need be expressed. If a question arises as to the validity of the financial statements submitted or to the adequacy of the financial structure, the Administrator may require an audit of a school, at the school's expense, by a Public Accountant or Certified Public Accountant.

Schools which are subsidiaries of a publicly held corporation may submit, in lieu of the statements required in Section C. 1, 2, and 3 above, the annual financial statements filed by the parent corporation with the Securities and Exchange Commission provided that:

(a) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year, and

(b) the parent corporation assumes full liability for the subsidiary school, as evidenced by a certified statement by the Board of Directors of the parent corporation.

D. Prior to a change in ownership of a proprietary school, the seller must furnish the Director an acceptable audited statement of financial position (balance sheet) of the school in a form consistent with generally accepted accounting principles as prescribed by the Administrator and prepared by an independent Public Accountant or Certified Public Accountant. The statement must include a detailed list of any student tuition refunds payable. The purchaser will furnish any evidence deemed appropriate by the Administrator to establish financial stability.

E. All financial statements must identify the name of the Public Accountant or Certified Public Accountant who prepared them and must be accompanied by the owner's affidavit that the statements are true and correct.

XII. Adequate Space for Instruction

The school shall provide adequate space for classroom instruction and laboratory experiences. Enrollment will not exceed the design characteristics of the student work stations. The facilities shall not be dangerously overcrowded or in substandard housing.

XIII. Maximum Pupil-Teacher Ratio

If adequate facilities and equipment are available, the following pupil-teacher ratios will be acceptable:

| | | |
|---|---|---|
| A. | Business theory | 40-1 |
| B. | Business lab | 50-1 |
| | (Examples: accounting, typing, shorthand) | |
| C. | Technical and vocational theory | 40-1 |
| D. | Technical lab | 20-1 |
| | (Examples: computer programming, data processing, electronics) | |

E. Vocational lab 30-1

(Examples: auto mechanics, air conditioning and refrigeration, drafting)

These ratios may be varied at the discretion of the Director to conform to conditions in an individual school.

XIV. Records

A. All schools shall make available the records and necessary data required for approval under the Texas Proprietary School Act for inspection by authorized representatives of the Texas Education Agency.

B. The schools will retain all records for at least three (3) years.

C. Each school shall maintain a master student registration list consisting of at least the following information for any person who signs an enrollment agreement and/or makes a down payment to attend the school:

1. Date
2. Name of student
3. Address of student
4. Telephone number
5. Social Security number
6. Name of course

HEARINGS BEFORE THE COMMISSIONER OF EDUCATION
FOR CONTESTED CASES
226.25.04

Rules 226.25.04.010-.480, concerning hearings before the commissioner of education for contested cases arising under the Texas Proprietary School Act are promulgated under the authority of the Texas Education Code, Section 32.22. In the event that the provisions of these rules concerning time limitations conflict with the provisions of the Texas Education Code, Sections 32.41 and 32.42, the provisions of these rules shall prevail as a result of the blanket repealer of conflicting laws contained in the Administrative Procedure and Texas Register Act, Section 22.

.010 NATURE OF HEARINGS AND APPEALS

Should an applicant be dissatisfied with the denial of a certificate of approval by the administrator, or should a licensee be dissatisfied with the administrator's revocation of his certificate of approval, or should a licensee be dissatisfied with conditions imposed by the administrator upon the continued approval represented by the certificate, or should a licensee or representative be dissatisfied with the denial or revocation by the administrator of a representative's registration, he may request a hearing before the administrator under the procedures of the Texas Proprietary School Act, the Administrative Procedure and Texas Register Act, and these rules. Should the applicant, licensee, or representative be dissatisfied with the final order of the administrator after said hearing, he may appeal said order to the State Board of Education under the procedures provided by these rules. Nothing contained in these rules shall deprive any party of any legal remedy.

.020. DEFINITIONS

(a) "Agency" means the Central Education Agency.

(b) "Board" means the State Board of Education.

(c) "Administrator" means the State Commissioner of Education or a person knowledgeable in the administration of regulating proprietary schools, designated by the Commissioner to administer the provisions of this Chapter.

(d) "Party" means an agency or person who has appeared in a contested case or who has filed timely notice of interest to appear, and who has not been dismissed or excluded by the administrator or hearing officer.

(e) "Contested case" means a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the administrator and/or the board.

(f) "Hearing officer" means any person appointed by the administrator to conduct hearings on matters within the agency's jurisdiction.

(g) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the agency.

(h) "Pleading" means written allegations filed by a party requesting or opposing action by the administrator or the board.

(i) "Petitioner" means the agency in its capacity as a party.

(j) "Respondent" means any party against whom action has been taken by the agency.

(k) "Intervenor" means any party otherwise not defined.

(l) "Applicant" means a party seeking a certificate of approval or a representative's registration from the agency.

(m) "Licensee" means a party who is the holder of a certificate of approval from the agency.

.030. OBJECT OF RULES

The purpose of these rules is to provide for a simple and efficient system of procedure before the agency to ensure uniform standards of practice and a fair and expeditious determination of causes arising under the Texas Proprietary School Act.

.040. SCOPE OF RULES

Extensions. Unless otherwise provided by statute, the filing of any pleading may be extended by order of the hearing officer, upon written motion duly filed with him prior to the expiration of the applicable period of time for the filing of the same, showing there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of said motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof. Any party may file written pleadings contesting a motion to extend; serving all other parties contemporaneously with the filing thereof.

.050. AGREEMENTS TO BE IN WRITING

No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any contested case shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of the hearing, or incorporated in an order bearing their written approval. This rule does not limit

a party's ability to waive, modify, or stipulate any right or privilege afforded by these rules, unless precluded by law. No stipulation or agreement shall be enforced unless signed by the attorney of record, if any, for each party to the stipulation or agreement.

.060. SERVICE OF PLEADINGS

(a) Service of pleadings. A copy of any reply, answer, motion, or other pleading filed by any party in any proceeding subsequent to the institution thereof shall be mailed by certified mail or otherwise delivered by the party filing the same to every other party of record. If any party has appeared in the proceeding by attorney or other representative authorized under this rule to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the hearing officer striking the reply, answer, motion, or other pleading from the record.

(b) Certificate of service. A certificate by the party, attorney, or representative who files the pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that I have this _____ day of _____, 19____, served copies of the foregoing pleading upon all other parties of record to this proceeding, by (here state the manner of service). Signature."

.070. CONDUCT AND DECORUM

Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the agency, the administrator, the hearing officer, the board, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of party shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

.080. CLASSIFICATION OF PARTIES

Parties to proceedings before the agency are petitioners, respondents, and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

.090. PARTIES IN INTEREST

Any party in interest may appear in any proceeding before the agency. All appearances shall be subject to a motion to strike upon a showing that the party has no justiciable or administratively cognizable interest in the proceeding. Any person, public official, or department of the State of Texas or any of its political subdivisions, or any civil or trade organization

shall be permitted to intervene in support of or opposition to all or part of the relief sought in any contested case by filing at least 10 days in advance of the hearing date a petition in intervention showing its interest and the basis for its position in the case, and at the hearing may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding. In all proceedings the agency is a party in interest.

.100. APPEARANCES

Any party may appear and be represented by an attorney at law authorized to practice law before the Supreme Court of the State of Texas. Any person except a corporation may appear on his own behalf, or by a bona fide full-time employee or by an elected or appointed officer of a governmental agency. A corporation, partnership or association may appear and be represented by any bona fide officer, partner, or full-time employee. The hearing officer may require any person appearing in a representative capacity to provide such evidence of this authority as the hearing officer may deam necessary.

.110. HEARING OFFICERS

The administrator may hear contested cases himself, or appoint a hearing officer to hold hearings and pre-hearing conferences, rule on motions, receive or not receive evidence, prepare proposals for decision, and perform all other duties concerning contested cases which are not required by statute to be performed by the administrator.

.120. CLASSIFICATION OF PLEADINGS

Pleadings filed with the agency in contested cases shall be petitions, answers, replies, exceptions, motions, and notices of hearing. Regardless of any error in the designation of the pleading, it shall be accorded its true status in the proceeding in which it is filed.

.130. FORM AND CONTENT OF PLEADINGS

(a) Typewritten or printed. Pleadings and briefs shall be written, typewritten, or printed upon paper 8-1/2 inches wide and 14 inches or 11 inches long with an inside margin of at least one inch wide, and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Content. Pleadings shall state their object, shall contain a concise statement of the facts in support of the same, and shall be signed by the party or a representative authorized by these rules.

(c) Signature and address. The original of every pleading shall be signed in ink by the party filing the paper or by his authorized representative. Pleadings shall contain the address of the party filing the document or the name, telephone number, and business address of the representative.

.140. EXAMINATION BY A HEARING OFFICER

Upon the filing of any pleading with a hearing officer, he may examine the same and determine its sufficiency under these rules. If he shall find that the pleading does not comply in all material respects with these rules, he shall return it to the person who filed it, along with his statement of the reasons for rejecting the same. The person who filed such pleading shall thereafter have the right to file a corrected pleading, provided that the filing of such corrected pleading shall not be permitted to delay any hearing unless the hearing officer shall determine that such delay is necessary in order to prevent an injustice or to protect the public interest and welfare.

.150. MOTIONS

Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during the hearing shall be filed with the hearing officer, who shall act upon the motion at the earliest practical time.

.160. AMENDMENTS

Amendments to any pleading offered within 14 days of the date set for the hearing or thereafter shall be permitted only after written consent of the hearing officer is obtained. Copies of all amendments, whenever filed, must be sent by the party offering the amendment to each party of record; and the hearing officer may, upon his own motion or the motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if the amendment materially alters the pleading on file.

.170. INCORPORATION BY REFERENCE OF AGENCY RECORDS

Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in those official files and records of the agency which are public record. This rule shall not relieve any petitioner of the necessity of alleging in detail, if required, facts necessary to sustain the burden of proof imposed by law.

.180. PREHEARING CONFERENCE

(a) In any proceeding, the hearing officer, on his own motion or the motion of the party or petitioner, may direct the parties, their attorneys, or representatives to appear before him at a specific time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

(1) the simplification of issues;

(2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by any party of matters of public record, to the end of avoiding unnecessary introduction of proof;

(3) the procedure at hearing;

(4) the limitation, where possible, of the number of witnesses;

(5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as are in dispute.

(b) Action taken at the conference shall be recorded in an appropriate manner by the hearing officer, unless the parties enter into a written agreement approved by him.

.190. MOTIONS FOR CONTINUANCE

Hearings may be continued on the agency's own motion or upon a motion for continuance filed by a party not less than five days prior to the designated date that the matter is to be heard. The party moving for a continuance must do so in writing and demonstrate good cause for the continuance. Copies of motions for continuance must be sent to all parties of record or their attorneys. In the event a continuance is ordered, the hearing officer shall promptly send notice of said continuance, such notice setting a new date for the hearing. The hearing officer need not hold a hearing on the motion for continuance. If the hearing cannot be held on the date for which it was set because a previously scheduled hearing is still in progress, no formal order for continuance shall be necessary. In such event, the parties and agency shall cooperate in holding the delayed hearing on the earliest possible date.

.200. PLACE AND NATURE OF HEARING

All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the administrator shall designate another place of hearing in the interest of the public.

.210. JOINT HEARINGS

A motion for consolidation of two or more proceedings must be in writing, signed by the movant, his attorney or representative, and filed with the administrator or the hearing officer prior to the date set for hearing. No two or more proceedings shall be consolidated or heard jointly without the affirmative consent of all parties to all such proceedings, unless the hearing officer or the administrator shall find that the two or more proceedings involve common questions of law and fact, and shall further find that separate hearings would result in unwarranted expense, delay or substantial injustice.

.220. PRESIDING OFFICER

(a) Hearings will be conducted by the administrator or a hearing officer who shall have the authority to administer oaths, to examine witnesses, to rule on motions, and to rule upon admissibility of evidence in amendments to pleadings. He shall have the authority to recess any hearing from day to day.

(b) If the presiding hearing officer dies, becomes disabled, withdraws, or is removed from employment from the case at any time before the final decision thereof, the administrator may appoint another presiding hearing officer who may perform any functions remaining to be performed without the necessity of repeating any previous proceedings in the case.

.230. REQUEST FOR HEARING.

Should a party be dissatisfied with any of the actions of the administrator as described in the rule entitled Nature of Hearings and Appeals, the party may by certified mail or personal service request a hearing with the administrator within 15 days after receipt of notice of said action.

.240. NOTICE OF HEARING

Upon receipt of a request for hearing, the administrator shall send a notice of hearing to all parties by certified mail, setting a hearing date, and said notice of hearing shall include:

(1) a statement of time, place, and nature of hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

.250. ORDER OF PROCEDURE AT HEARING

(a) The petitioner shall present its case, the respondent or respondents shall next present its or their case, and the petitioner shall then present its case in rebuttal. In those cases where there is more than one petitioner, the petitioner whose pleading is deemed officially filed first shall present its case, and the petitioners next in line shall then proceed with the respondent or respondents next proceeding, and the petitioners presenting their case in rebuttal in the same order as their case in chief.

(b) The parties may be allowed, in the discretion of the hearing officer, to make opening or closing statements or both, with the petitioner or petitioners going first.

(c) In any case where a party is represented by more than one attorney, the hearing officer shall require such party to designate a lead counsel who shall conduct the case for that party. The hearing officer may allow substitution for the lead counsel.

(d) All witnesses at a hearing shall testify under oath.

(e) A party may conduct cross-examination if required for a full and true disclosure of the facts.

.260. TRANSCRIPT

Proceedings, or any part of them, may be transcribed at the instance of the hearing officer or agency attorney, and must be transcribed upon the written request of any party.

.270. REPORTER

(a) When a party other than the agency makes a written request that proceedings be transcribed, the party shall state in writing his election to furnish his own stenographic reporter or utilize a reporter provided by the agency.

(b) If the party elects to furnish the stenographic reporter, the cost of the original transcript shall be assessed to the party requesting the transcription. The original transcript shall be delivered to the hearing officer not more than 14 days after the close of the hearing. A stenographic reporter may sell a copy of the transcript if the stenographic reporter first submits a written request to the hearing officer containing:

(1) the full name and address of the party requesting the copy;

(2) the number of pages in the transcript;

(3) the cost of the copy to the party.

Upon approval of the request by the hearing officer, the stenographic reporter shall furnish a copy to the requesting party. The hearing officer may exclude any stenographic reporter for late delivery or poor workmanship in previous hearings.

.280. CORRECTIONS TO THE TRANSCRIPT

Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the hearing officer shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the hearing officer. If suggested corrections are not objected to, the hearing officer may direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the hearing officer, who shall determine the manner in which the record shall be changed, if at all.

.290. FORMAL EXCEPTIONS

Formal exceptions to rulings of the hearing officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearing officer the action which he desires.

.300. BRIEFS

Briefs shall be filed when requested or permitted by the hearing officer. They shall conform, as near as may be, to the rules herein provided for forms of pleadings. The points involved shall be concisely stated. The evidence in support of each point shall be briefly summarized, and the argument and authority shall be organized and directed to each point in a concise and logical manner. Briefs shall contain a table of contents and authorities.

.310. DISMISSAL WITHOUT HEARING

The hearing officer may entertain motions for dismissal without a hearing for the following reasons: failure to prosecute; unnecessary duplication of proceedings or res judicata; withdrawal, moot questions or stale petitions; lack of jurisdiction; failure to raise a material issue in the pleading, or failure to state a cause of action upon which relief may be granted.

.320. ADMISSIBILITY IN GENERAL

Rules of evidence shall be governed by Section 14, et seq., of the Administrative Procedure and Texas Register Act.

.330. DOCUMENTARY EVIDENCE

Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy. When numerous documents are offered, the hearing officer may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents in the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the hearing officer shall require that all parties of record or their representatives be given the right to examine the document from which such abstracts were made.

.340. OFFICIAL NOTICE

In connection with any hearing held, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so offered. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

.350. PREPARED TESTIMONY

In all proceedings and after service of copies upon all parties of record at such times as may be designated by the hearing officer, the prepared testimony of the witness upon direct examination, either in narrative or question-and-answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to ruling by the administrator or hearing officer on a motion to strike in whole or in part.

.360. LIMITATION ON NUMBER OF WITNESSES

The hearing officer shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

.370. EXHIBITS

(a) Form. Exhibits of documentary character shall be of such size as to not unduly encumber the files and records of the agency. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) Tender and service. The original of each exhibit shall be tendered to the reporter to mark for identification; one copy shall be furnished to the hearing officer and one copy to each other party of record or his attorney or representative.

(c) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the hearing officer shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the hearing officer with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Post-hearing offers. No exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing, unless specifically directed by the hearing officer or by the administrator, with service or copies of the late-filed exhibit on all parties of record and sufficient opportunity to all parties for the filing of objections.

.380. OFFER OF PROOF

When testimony on direct examination is excluded by ruling of the hearing officer, the party offering such evidence shall be permitted to make an offer of proof by eliciting from the witness said testimony to be placed in a bill of exception, and such offer of proof shall be sufficient to preserve the point for review. When an objection to a question asked on cross-examination is sustained, an error asserted may be preserved without making an offer of proof.

.390. DEPOSITIONS

Upon written request by a party, the administrator or any hearing officer may issue a commission addressed to officers authorized by statute to take a deposition of witnesses. Such commissions shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incidental to the deposition. The use of depositions in any proceeding shall be governed by the Administrative Procedure and Texas Register Act.

.400. INTERROGATORIES

At any time after a party has made appearance in a contested case, any other party may serve upon such party written interrogatories to be answered by the party served. The rules for interrogatories shall be those described in Rule 168 of the Texas Rules of Civil Procedure.

.410. ADMISSIONS OF FACTS AND OF GENUINENESS OF DOCUMENTS

At any time after the respondent has made appearance in a contested case, a party may cause to be delivered to any other party or his attorney of record a written request for the admission by such party of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth by the request. The rules for said request shall be those described in Rule 169 of the Texas Rules of Civil Procedure.

.420. REFUSAL TO MAKE DISCOVERY: CONSEQUENCES

If any party or an officer or managing agent of a party refuses to obey an order for discovery made under these rules, the administrator may make such orders in regard to the refusal as are just, and among others, the following:

(a) an order that the matters regarding the character or description of the thing, or the contents of the paper, or any other designated facts shall be taken as established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony;

(c) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

.430. SUBPOENAS

(a) Subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding may be issued by the administrator, or, during the course or pendency of a hearing, by the hearing officer upon written request by a party or his own motion.

(b) Motions for subpoenas to compel the production of books, papers, accounts, or documents shall be addressed to the administrator or hearing officer, shall be verified, and shall specify as nearly as may be the books, papers, accounts, or documents desired and the material and relevant facts to be proven by them. If the matter sought is relevant, material, and necessary and if requiring production of the same will not result in harrassment, imposition, or undue inconvenience or expense to the witness, the administrator, or during the course or pendency of the hearing, the hearing officer, may issue a subpoena compelling production of books, papers, accounts, or documents as deemed necessary.

(c) Such subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to ensure payment of expenses incident to the subpoenas. Witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act.

.440. PROPOSAL FOR DECISION

In all proceedings in which a hearing officer recommends action adverse to any party other than the agency, he shall prepare and file with the administrator a proposal for decision. The proposal for decision may contain a brief statement of the nature of the case and the issues and may also contain a concise and explicit discussion of the evidence. The proposal for decision shall contain findings of fact and conclusions of law based on the record. A copy thereof shall be served forthwith on each party or his attorney of record. Upon the expiration of the 20th day following the time provided for the filing of exceptions of these rules, the hearing officer's recommended order and the proposal for decision may be adopted by written order of the administrator unless exceptions shall have been filed, in which case the administrator may so adopt the hearing officer's recommended order after ruling on said exceptions.

.450. FILING OF EXCEPTIONS AND REPLIES

Any party of record may, within 20 days after the date of service of the hearing officer's proposal for decision, file exceptions to the proposal for decision, and replies to such exceptions may be filed within 15 days after the date for filing of such exceptions. Any requests for extension of time within which to file exceptions or replies shall be filed with the hearing officer, and a copy thereof shall be served on all other parties of record by the party making such request. The hearing officer shall promptly notify the parties of his action upon the same and shall allow additional time only in extraordinary circumstances where the interests of justice so require.

.460. FORM OF EXCEPTIONS AND REPLIES

Exceptions and replies to a proposal for decision shall conform as near as may be to the rules herein provided for form of pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and such evidence in the arguments shall be grouped under the exceptions to which they relate.

.470. ORDERS

All orders of the administrator shall be in writing and shall be signed by him. They shall incorporate the findings of fact and conclusions of law required by law, either in the body of the order or by reference to the hearing officer's proposal for decision. A copy of each order shall be served forthwith upon all parties to the proceeding.

.480. MOTIONS FOR REHEARING

(a) Prior to the entry of his order, if the administrator concludes that substantial errors of procedure or the exclusion of evidence have so affected the record as to render it impractical to determine the case justly and fairly upon the record, he may order a rehearing.

(b) Unless extension or reduction be granted under the next paragraph, the times prescribed in this paragraph shall control. If a party wishes to file motion for rehearing, it must be filed with the administrator within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing, if any, must be filed with the administrator within 25 days after the date of rendition of the final decision or order. A motion for rehearing is not a prerequisite to an appeal to the State Board of Education.

The administrator may by written order extend the period of time for filing a motion for rehearing and replies, except that an extension may not extend the period for the administrator's action on the motion for rehearing beyond 60 days after the date of rendition of his final decision or order. The parties may by agreement and with the approval of the administrator reduce any of the times provided in this rule.

## APPEALS TO THE STATE BOARD OF EDUCATION FOR CONTESTED CASES ARISING UNDER THE TEXAS PROPRIETARY SCHOOL ACT 226.25.05

The Texas Education Agency has adopted Rules 226.25.05.010-.060, concerning appeals to the State Board of Education for contested cases arising under the Texas Proprietary School Act.

These rules are promulgated under the authority of the Texas Education Code, Section 32.22. In the event that the provisions of these rules concerning time limitations conflict with the provisions of the Texas Education Code, Sections 32.41 and 32.42, the provisions of these rules shall prevail, as a result of the blanket repealer of conflicting laws contained in the Administrative Procedure and Texas Register Act, Section 22.

.010. PROCEDURE FOR APPEAL

(a) Any party who has been aggrieved by a final order of the administrator under these rules may appeal that decision to the State Board of Education.

(b) The aggrieved party must file an appeal with the administrator within 15 days after the date of the administrator's decision, or, if a motion for rehearing has been filed, within 15 days from the date the motion for rehearing is overruled by the commissioner or by operation of law.

(c) A copy of the appeal request shall be sent by the appellant to all parties of record before the administrator.

(d) The record of appeal to the board shall consist of the following:

(1) the transcript of the hearing made before the administrator or hearing officer;

(2) pleadings of record;

(3) the final decision of the administrator and the proposal for decision of the hearing officer;

(4) evidence offered at the hearing before the administrator;

(5) other items of record designated by any party in the notice of appeal to the State Board of Education, or otherwise designated in writing within 15 days of the date the notice of appeal is submitted to the administrator;

(6) the administrator shall certify the materials set forth above to the board within 10 days of the receipt of the notice of appeal.

.020. NOTICE

The board shall through the administrator, cause notice of hearing to be mailed by certified mail to all parties of record of the date and time for hearing, said notice to be mailed within 30 days from receipt of the notice of appeal.

.030. TESTIMONY AND EVIDENCE

(a) At the hearing before the board, any party to the appeal may file a brief in at least five copies. Appeals to the board shall be considered on the record, briefs, and oral argument only. If a party desires to submit a brief, it must be submitted within 15 days from the date the notice of appeal was filed with the commissioner, and reply briefs must be submitted within 30 days from the date the notice of appeal was filed with the commissioner.

(b) Any party desiring to make oral argument before the board must file a written statement of intention to do the same not less than 10 days prior to the date set for the hearing before the board.

.040. DECISIONS

(a) The decision of the State Board of Education shall be rendered within 60 days from the date the hearing on the appeal is closed.

(b) In the event the board shall decide to reverse the decision of the administrator, a motion, either made orally and placed in the minutes of the board or presented in written form and made a part of the minutes of the board, shall be adopted. The motion shall include findings of fact and conclusions of law in sufficient detail to show the basis for the board's decision. A copy of the board's decision shall be mailed within 10 days to all parties of record.

.050. REHEARING

(a) A motion for rehearing must be filed with the board within 15 days after the date of the rendition of a final decision or order. Replies to a motion for rehearing must be filed with the board within 25 days after the rendition of the final decision or order, and the board's action on the motion must be taken within 45 days of the date of the rendition of the final decision or order. If the board does not act within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order.

(b) The board may, by written order, extend the period of time for filing the motion for rehearing and reply, except that an extension may not extend the period for the board's action on the motion for rehearing beyond 60 days after the date of rendition of its final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order granting the extension, or, in the absence of a fixed date, 60 days after the date of the final decision or order.

(c) The board may rule on a motion for rehearing or extend the period of time for filing the motion for rehearing and reply at a meeting or by mail, telephone, telegraph, or other suitable means of communication.

(d) A motion for rehearing is a prerequisite to an appeal from the board's decision.

.060. ADMINISTRATIVE FINALITY

For purposes of appeal, administrative finality shall be considered to have occurred upon the exhaustion of all administrative remedies available before the State Board of Education, in addition to those available before the administrator.

Texas Education Code, Title 2, Chapter 32
(as amended by S.B. 18, Sixty-second Legislature,
First Called Session, H.B. 427
Sixty-third Legislature, Regular Session, and
S.B. 81, Sixty-fifth Legislature, Regular Session)

## CHAPTER 32. TEXAS PROPRIETARY SCHOOL ACT

### SUBCHAPTER A. TITLE AND PURPOSE

Section 32.01. SHORT TITLE. This Act shall be known as the "Texas Proprietary School Act."

Section 32.02. PURPOSE AND OBJECTIVES. The aim in adopting this Chapter is to provide certification and regulation of proprietary schools in Texas.

### SUBCHAPTER B. GENERAL PROVISIONS

Section 32.11. DEFINITIONS. The following words, terms, and phrases shall have the meaning ascribed to them in this section.

(1) "Proprietary School," referred to as "school," means any business enterprise operated for a profit, or on a nonprofit basis, which maintains a place of business within the State of Texas, or solicits business within the State of Texas, and which is not specifically exempted by the provisions of this Chapter and;

(A) which offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both, to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement, except as hereinafter excluded.

(2) "Owner" of a school means:

(A) in the case of a school owned by an individual, that individual;

(B) in the case of a school owned by a partnership, all full, silent, and limited partners;

(C) in the case of a school owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least ten percent (10%) of the total of the issued and outstanding shares.

(3) "School employee" means any person other than an owner, who directly or indirectly receives compensation from the school for services rendered.

(4) "Representative" means a person employed by the school as defined herein, whether the school is located within or without the State of Texas, to act as an agent, solicitor, broker, or independent contractor to directly procure students or enrollees for the school by solicitation within or without this State at any place.

(5) "Administrator" means the State Commissioner of Education or a person knowledgeable in the administration of regulating proprietary schools, designated by the Commissioner to administer the provisions of this Chapter.

(6) "Notice to the school" means written correspondence sent to the address of record for legal service contained in the application for a certificate of approval. "Date of Notice" means the date the notice is mailed by the Administrator.

(7) "Support" or "supported" means the primary source and means by which a school derives revenue to perpetuate its operation.

(8) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(9) "Unearned tuition" means refunds due former students under Section 32.39, total tuition and fees collected from students currently enrolled, and total tuition and fees collected from prospective students.

Section 32.12. EXEMPTIONS. (a) The following schools or educational institutions are specifically exempt from the provisions of this Chapter and are not within the definition of "proprietary school."

(1) a school or educational institution supported by taxation from either a local or State source;

(2) nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this State, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this Chapter as determined by the Administrator;

(3) a school or training program which offers instruction of purely avocational or recreational subjects as determined by the Administrator;

(4) a course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student;

(5) a course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership;

(6) private colleges or universities which award a recognized baccalaureate, or higher degree, and which maintain and operate educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or State source;

(7) a school which is otherwise regulated and approved under and pursuant to any other law of the State;

(8) aviation schools or instructors approved by and under the supervision of the Federal Aviation Administration;

(9) a school which offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations, or medical college admissions tests.

(b) Schools offering a course or courses of special study or instruction financed and/or subsidized by local, State or Federal funds or any person, firm, association, or agency other than the student involved, on a contract basis and having a closed enrollment may apply to the Administrator for exemption of such course or courses from the provisions of this Chapter and such course or courses may be declared exempt by the Administrator where he finds the course or courses to be outside the purview of this Chapter.

## SUBCHAPTER C. GENERAL POWERS AND DUTIES

Section 32.21. CENTRAL EDUCATION AGENCY. The Central Education Agency shall exercise jurisdiction and control of the system of schools, and it shall be the duty of the Commissioner of Education to carry out supervision of the provisions of this Chapter, and to enforce minimum standards for approval of schools under the operating regulations and policies hereinafter set forth as may from time to time be adopted pursuant to the provisions of this Chapter.

Section 32.22. THE STATE BOARD OF EDUCATION. The State Board of Education shall adopt policies, regulations and rules necessary for carrying out the provisions of this Chapter after consultation with the Proprietary School Advisory Commission.

Section 32.23. PROPRIETARY SCHOOL ADVISORY COMMISSION.

(a) The Proprietary School Advisory Commission is created. The Commission shall be composed of nine members appointed by the State Board of Education for staggered terms of six (6) years expiring on January 31 of each odd-numbered year. In making the initial appointments, the Board shall designate three (3) members for terms expiring in 1973, three for terms expiring in 1975, and three for terms expiring in 1977. If one of the Commission members resigns or is otherwise unable to serve, a new member shall be appointed by the State Board of Education to fill the unexpired term. Four members of the Commission shall be "owners" or shall be "employees" employed in a managerial or executive capacity by the schools as

defined in Section 32.11 of this Code and shall include at least one member from each of the following school areas: (1) trade and technical schools, (2) business schools, and (3) correspondence schools; of these four members, one shall be a person who owns or operates not more than two (2) proprietary schools in Texas; three members shall be public school officials; and two members shall be distinguished citizens of Texas with an interest in providing vocational-technical training in Texas. All members shall have been recommended by the Administrator to the State Board of Education. In making his recommendations, the Administrator shall consider any recommendations made to him by parties interested in the composition of the Advisory Commission.

(b) The Commission shall elect one member as chairman of the Commission. A majority of the appointed members at the call of the chair shall organize and elect the other officers that the Commission deems necessary.

(c) The Commission shall meet regularly in Austin at 10:00 a.m. on the second Tuesday of January, May, and September, and shall conduct special meetings at the call of the chair, the Administrator, or upon the written petition of at least four members of the Commission.

(d) A member of the Commission serves without compensation but upon presentation of a voucher signed by the chairman of the Commission and approved by the Administrator is entitled to receive reimbursement for actual expenses incurred while traveling on official Commission business in accordance with the policy and regulations of the State of Texas.

(e) A majority of the Commission is a quorum for the conduct of business; provided, however, that no less than four voting members must concur in any matter before the Commission.

(f) The Commission shall be advisory in nature. It shall act with the advice and assistance of the Administrator and may hold hearings upon substantive changes in rules, regulations and minimum standards. The advice of the Commission with respect to the policies, regulations, minimum standards, and rules for carrying out the provisions of this Chapter, shall be forwarded by the Administrator to the State Board of Education.

Section 32.24. DUTIES OF ADMINISTRATOR.

(a) The Administrator shall carry out the policies of this Chapter and enforce the rules and regulations adopted by the State Board of Education. He shall also certify the names of those schools meeting the requirements for a certificate of approval.

(b) The Administrator may adopt and enforce temporary rules and regulations pursuant to the provisions of this Chapter but the temporary rules and regulations are valid only until the next meeting of the State Board of Education.

## SUBCHAPTER D. AUTHORIZED OPERATION OF SCHOOLS

Section 32.31. CERTIFICATE OF APPROVAL.

(a) No school shall maintain, advertise, solicit for, or conduct any course of instruction in Texas without first obtaining a certificate of approval from the Administrator.

(b) Any contract entered into with any person for a course of instruction after the effective date of this Chapter by or on behalf of any person operating any school to which a certificate of approval has not been issued pursuant to the provisions of this Chapter, shall be unenforceable in any action brought thereon.

Section 32.32. APPLICATION FOR CERTIFICATE OF APPROVAL. Every proprietary school desiring to operate in the State of Texas or do business in the State shall make written application to the Administrator for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the State Board of Education, and shall furnish the Administrator such information as he may require.

Section 32.33. CRITERIA. The Administrator may approve the application of such proprietary school when the school is found, upon investigation, to have met the following criteria:

(a) The courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum or instruction are offered.

(b) There is in the school adequate space, equipment, instructional material and instructor personnel to provide training of good quality.

(c) Educational and experience qualifications of directors, administrators and instructors are adequate.

(d) The school maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school for previous education and training, with the new training period shortened where warranted through use of appropriate skills or achievement tests and the student so notified.

(e) A copy of the course outline; schedule of tuition, fees, refund policy, and other charges; regulations pertaining to absence, grading policy, and rules of operation and conduct will be furnished the student prior to enrollment.

(f) Upon completion of training, the student is given a certificate by the school indicating the course and that training was satisfactorily completed.

(g) Adequate records as prescribed by the Administrator are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress and conduct are enforced.

(h) The school complies with all local, city, county, municipal, State and Federal regulations, such as fire, building and sanitation codes. The Administrator may require such evidence of compliance as is deemed necessary.

(i) The school is financially sound and capable of fulfilling its commitments for training.

(j) The school's administrators, directors, owners, and instructors are of good reputation and character.

(k) The school has, maintains and publishes in its catalogue and enrollment contract, the proper policy for the refund of the unused portion of tuition, fees and other charges in the event the student enrolled by the school fails to take the course or withdraws or is discontinued therefrom at any time prior to completion.

(l) The school does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation as determined by the State Board of Education.

(m) Such additional criteria as may be required by the State Board of Education.

(n) The school does not use a name like or similar to an existing tax supported school in the same area.

Section 32.34. ISSUANCE OF CERTIFICATE OF APPROVAL.

RENEWAL. (a) The Administrator, upon review of an application for a certificate of approval duly submitted in accordance with the provisions of Section 32.32 and meeting the requirements of Section 32.33 of this Chapter, shall issue a certificate of approval to the applicant school. The certificate of approval shall be in a form recommended by the Commission and approved by the State Board of Education and shall state in a clear and conspicuous manner at least the following information:

(1) date of issuance, effective date, and term of approval;

(2) correct name and address of the school;

(3) authority for approval and conditions of approval, if any, referring specifically to the approved catalogue or bulletin published by the school;

(4) signature of the Administrator or such person as may have been designated by him to administer the provisions of this Chapter; and

(5) any other fair and reasonable representations that are consistent with this Chapter and deemed necessary by the Administrator.

(b) The term for which a certificate of approval shall be issued shall not exceed one year.

(c) The certificate of approval shall be issued to the owner of the applicant school and shall be nontransferable. In the event of a change in ownership of the school, a new owner must, at least thirty (30) days prior to the change in ownership, apply for a new certificate of approval.

(d) At least thirty (30) days prior to expiration of a certificate of approval, the school shall forward to the Administrator an application for renewal. The Administrator shall reexamine the school and either renew or cancel the school's certificate of approval.

(e) A school not yet in operation when its application for certificate of approval is filed may not begin operation until receipt of certificate of approval.

Section 32.35. DENIAL OF CERTIFICATE OF APPROVAL.

(a) If the Administrator, upon review and consideration of an application for certificate of approval, shall determine the applicant to be unacceptable, the Administrator shall set forth the reasons for denial in writing, to the applicant.

(b) Any applicant whose certificate of approval is denied shall have the right of appeal under Subchapter E of this Chapter.

Section 32.36. REVOCATION OF CERTIFICATE OF APPROVAL.

(a) The Administrator may revoke an issued certificate of approval or place reasonable conditions upon the continued approval represented by the certificate. Prior to revocation or imposition of conditions upon a certificate of approval, the Administrator shall notify the holder of the certificate, in writing, of the impending action and set forth the grounds for the action.

(b) A certificate of approval may be revoked or made conditional if the Administrator has reasonable cause to believe that the school is guilty of a violation of this Chapter or of any rules and regulations promulgated hereunder.

Section 32.37. REGISTRATION OF REPRESENTATIVES.

(a) All representatives employed by a school shall register with the Administrator. Application for registration may be made at any time and shall be based on information submitted in accordance with the provisions of Section 32.32 of this Chapter.

(b) Registration of a representative shall be effective upon receipt of notice from the Administrator and shall remain in effect for a period not in excess of twelve (12) calendar months. Renewal of representative registration shall be in accordance with the renewal application form forwarded to the school by the Administrator.

(c) Denial or revocation of registration of a representative by the Administrator shall be in accordance with the provisions of this Chapter applicable to denial or revocation of a certificate of approval; provided, however, the Administrator may deny, suspend or revoke the registration of a representative who has been convicted of a felony, whether within or without the State of Texas.

(d) Schools domiciled, or having their principal place of business outside the State of Texas that engage representatives to canvass, solicit or contract with any person within the State of Texas, shall be subject to the requirements for registration of representatives.

Section 32.38. BOND REQUIREMENTS.

(a) Before a certificate of approval is issued under this Chapter, a bond shall be provided by the school for the period during which the certificate of approval is issued, and the obligation of the bond shall be that neither a provision of this Chapter nor any rule or regulation adopted pursuant thereto shall be violated by the school or any of its officers, agents, or employees. The bond shall be in the penal sum of $25,000 except a bond in the penal sum of $5,000 may be provided if the school submits evidence acceptable to the Administrator that the total unearned tuition of the school will not exceed $5,000 at any given time during the period of the certificate of approval. The bond shall be a corporate surety bond issued by a company authorized to do business in the State, conditioned that the parties thereto shall pay all damages or expenses which the State or any governmental subdivision thereof, or any student or potential student may sustain resulting from a violation. The bond shall be to the State for the use and benefit of any student or potential student or governmental subdivision of the State which may suffer expenses or damage by breach thereof. The bond shall be filed with the Administrator and shall be in such form as shall be approved by the Administrator.

(b) Before a representative may be registered under this Chapter, a bond in the penal sum of $1,000 shall be provided by or for each representative for a period running concurrently with that of the school's certificate of approval, and the obligation of the bond shall be that neither a provision of this Chapter nor any rule or regulation adopted pursuant thereto shall be violated, nor shall fraud or misrepresentation in securing the enrollment of a student be committed by the representative. The bond shall be a corporate surety bond issued by a company authorized to do business in the State, conditioned that the parties thereto shall pay all damages or expenses which the State, any governmental subdivision thereof, or any student or potential student may sustain resulting from a violation. The bond shall be to the State for the use and benefit of any student or potential student or governmental subdivision of the State which may suffer expense or damage by breach thereof. The bond shall be filed with the Administrator and shall be in such form as shall be approved by the Administrator.

(c) In lieu of the corporate surety bond required in Subsections (a) and (b) of this Section, the school may, in the alternative, provide any other similar certificate or evidence of indebtedness as may be acceptable to the Administrator, provided that the certificate or evidence of indebtedness meets all the requirements applicable to the corporate surety bond.

(d) Schools domiciled, or having their principal place of business, outside the State of Texas, that engage representatives to canvass, solicit, or contract with any person within the State of Texas, shall be subject to the bond requirements for both the school and its representatives.

(e) The Administrator, for good cause shown, as recommended by the Commission and approved by the State Board of Education, may waive and suspend the requirements set forth in Subsections (a), (b), and (c) of this Section with respect to schools operating wholly or in part under a Federal grant where no tuition fee is charged to the student.

Section 32.39. REFUND POLICY.

(a) As a condition for granting certification each school must maintain a cancellation and settlement policy which must provide a full refund of all monies paid by a student if:

(1) the student cancels the enrollment agreement or contract within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student;

(2) the enrollment of the student was procured as the result of any misrepresentation in advertising, promotional materials of the school, or representation by the owner or representatives of the school.

(b) As a condition for granting certification, each school must maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege fails to enter the course, or withdraws, or is discontinued therefrom at any time prior to completion, and such policy must provide:

(1) refunds will be based on the period of enrollment computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes will be the earliest of the following:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date of receipt of written notice from the student;

(C) ten school days following the last date of attendance;

(3) if tuition is collected in advance of entrance, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the residence school, not more than $50 shall be retained by the school;

(4) for the student who enters a residence course of not more than 12 months in length, terminates or withdraws, the school may retain $50 of tuition and fees and the minimum refund of the remaining tuition will be:

(A) during the first week or one-tenth of the course, whichever is less, 90 percent of the remaining tuition;

(B) after the first week or one-tenth of the course, whichever is less, but within the first quarter of the course, 75 percent of the remaining tuition;

(C) during the second quarter of the course, 50 percent of the remaining tuition;

(D) during the third quarter of the course, 25 percent of the remaining tuition;

(E) during the last quarter of the course, the student may be considered obligated for the full tuition.

(5) for residence courses more than 12 months in length, the refund shall be applied to each 12-month period, or part thereof separately;

(6) refunds of items of extra expense to the student, such as instructional supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges where these items are separately stated and shown in the data furnished the student before enrollment, will be made in a reasonable manner acceptable to the Administrator;

(7) refunds will be totally consummated within 30 days after receipt of written request or termination by the school;

(8) refunds for correspondence courses will be computed on the basis of the number of lessons in the course;

(9) the effective date of the termination for refund purposes in correspondence courses will be the earliest of the following:

(A) the date of notification to the student if the student is terminated;

(B) the date of receipt of written notice from the student;

(C) the end of the third calendar month following the month in which the student's last lesson assignment was received unless notification has been received from the student that he wishes to remain enrolled.

(10) if tuition is collected before any lessons have been completed, and if, after expiration of the 72-hour cancellation privilege, the student fails to begin the course, not more than $50 shall be retained by the school;

(11) in cases of termination or withdrawal after the student has begun the correspondence course, the school may retain $50 of tuition and fees, and the minimum refund policy must provide that the student will be refunded the pro rata portion of the remaining tuition, fees and other charges that the number of lessons completed and serviced by the school bears to the total number of lessons in the course;

(12) refunds based on enrollment in correspondence schools will be totally consummated within 30 days after the effective date of termination.

(c) In lieu of the refund policy herein set forth, for programs of instruction not regularly offered to the general public, the State Board of Education may, for good cause shown, amend, modify, substitute and/or alter the terms of such policy due to the specialized nature and objective of the subject school's course of instruction.

(d) If a course of instruction is discontinued by the school and this prevents the student from completing the course, all tuition and fees paid are then due and refundable.

## SUBCHAPTER E. APPEAL

Section 32.41. HEARING. Should the applicant be dissatisfied with the denial of a certificate of approval by the Administrator, the applicant shall have the right to appeal the decision of the Administrator and request a hearing with the Administrator within fifteen (15) days after receipt of notice. Upon receipt of the request for a hearing, the Administrator shall set a time and place for said hearing and then send notice to the school of said time and place. Said hearing shall be held within thirty (30) days from the receipt of the request for a hearing. At said hearing, an applicant may appear in person or by counsel and present evidence to the Administrator in support of the granting of the permit specified herein. All interested persons may also appear and present oral and documentary evidence to the Administrator, concerning the issuance of a certificate of approval to the applicant school. Within ten (10) days after the hearing, the Administrator shall send notice to the school either affirming or revoking the denial of the certificate of approval.

Section 32.42. APPEAL.

(a) If the results of the hearing affirm the denial of a certificate of approval, the applicant may request a hearing before the State Board of Education. Said hearing must be requested within fifteen (15) days after receipt of notice of affirmation of denial. The State Board of Education shall, within thirty (30) days after receipt of the request for hearing, set

a time and place for said hearing, and send proper notice to the school of this time and place. At said hearing before the State Board of Education, the applicant may appear in person or by counsel and present arguments to the State Board of Education in support of the granting of the certificate of approval specified herein. The State Board of Education shall consider the appeal from the decision of the Administrator on the basis of the record made in the hearing before the Administrator.

The State Board of Education shall, within ten (10) days of such hearing, issue an order granting or denying a certificate of approval for the operation of a proprietary school and shall state in such order the reasons for its decision.

(b) Upon the granting or denial of a certificate of approval, the State Board of Education shall serve a copy of its order upon the school by registered mail within ten (10) days of the entry of such order by said Board. Such order may be appealed to any District Court of competent jurisdiction by the filing of a lawsuit therein within fifteen (15) days after receipt by such school of the copy of such order served by registered mail as herein provided. Venue in such lawsuits shall lie in Travis County, Texas.

(c) Unless stayed by the Court upon a showing of good cause, the order of the State Board of Education shall not be superseded during such appeal; if the Court is of the opinion that justice will be served thereby.

(d) Upon the filing of such lawsuit, citation shall be served upon the Administrator as agent for the State Board of Education. Whereupon, the Administrator shall cause to be made a complete record of all proceedings had before the Administrator and before the State Board of Education, and shall certify a copy of such proceedings to the Court. Trial before the Court shall be upon the basis of the record made before the Administrator and the State Board of Education, and the Court shall make its decision based upon such record. The decision of the State Board of Education shall be affirmed by the Court if the Court finds substantial evidence in the record to justify the decision of the State Board of Education, unless the Court finds such order to be:

(1) arbitrary and capricious, or

(2) in violation of the Constitution or laws of the State of Texas, or

(3) in violation of rules and regulations promulgated by the State Board of Education pursuant to the provisions of the Act.

(e) The decision of the trial court shall be subject to appeal in like manner as any other civil lawsuit under the Texas Rules of Civil Procedure.

(f) Appeals concerning revocation of certificates of approval shall be prosecuted in the same manner and under the same provisions as herein provided for appeals from denial of such certificates.

## SUBCHAPTER F. CLASS ACTION SUITS

Section 32.51. CLASS ACTION. Any person or persons who shall be injured by an act taken or permitted in violation of this Act may, on behalf of himself or themselves and others similarly situated, maintain an action in any District Court of competent jurisdiction, regardless of the amount in controversy, for temporary or permanent injunctive relief, declaratory relief, or other relief, including damages, such action to be pursued in accordance with the provisions of Rule 42 of the Texas Rules of Civil Procedure; provided, however, that venue for any such action shall be in Austin, Travis County, Texas. A party filing such an action must give prompt notice to the Attorney General, who shall be permitted to join, upon application within 30 days, as a party plaintiff.

Section 32.52. NOTICE. In any class action permitted under this Act, the Court shall direct the defendent to serve upon each member of the class the best possible notice; and if required in the interest of justice, the Court may direct that individual notice be served upon all members of the class who can be identified through reasonable efforts. Such notice shall inform the recipient that he is thought to be a member of the class and, if so, he may enter an appearance and join in the suit, either for himself or through counsel.

Section 32.53. JUDGMENT AND COSTS. The Court shall enter judgment in each class action brought under the provisions hereof in such form as shall be justified by the facts and the law applicable thereto. Damages shall be awarded only to those members of the class who joined as parties plaintiff, but all other relief granted by the Court shall inure to the benefit of all members of the class. Should a plaintiff prevail in such a class action, he shall be awarded court costs and a reasonable counsel fee in the judgment. A legal aid society or legal services program which represents the plaintiff or plaintiffs in such action shall be awarded a service fee in lieu of a counsel fee.

## SUBCHAPTER G. PROHIBITED ACTS

Section 32.61. PROHIBITIONS.

(a) No person shall:

(1) operate a school without a certificate of approval issued by the Administrator;

(2) solicit prospective students without being bonded as required by this Chapter;

(3) accept contracts or enrollment applications from a representative who is not bonded as required by this Chapter;

(4) utilize advertising designed to mislead or deceive prospective students;

(5) fail to notify the Administrator of the discontinuance of the operation of any school within 72 hours of cessation of classes and make available accurate records as required by this Chapter;

(6) fail to secure and file within 30 days an increased bond as required by this Chapter;

(7) negotiate any promissory instrument received as payment of tuition or other charge prior to completion of 75 percent of the course, provided that prior to such time, the instrument may be transferred by assignment to a purchaser who shall be subject to all the defenses available against the school named as payee;

(8) violate any provision of this Chapter.

(b) A person who violates Subsection (a) of this Section is guilty of a misdemeanor and upon conviction, shall be subject to a fine not to exceed Five Hundred Dollars ($500.00) and each day that any prohibited act continues shall constitute a separate offense.

Section 32.62. INJUNCTIONS. Whenever the Administrator has probable cause to believe that any school has committed any acts that would be in violation of this Chapter, the Administrator shall have the duty to make application to a court of competent jurisdiction for an injunction restraining the commission of such acts.

## SUBCHAPTER H. FEES

Section 32.71. CERTIFICATE AND REGISTRATION FEES. Certificate and registration fees shall be collected by the Administrator and deposited with the State Treasurer in accordance with the following schedule:

(1) the initial fee for a school is Two Hundred Fifty Dollars ($250.00);

(2) the annual renewal fee for a school is Two Hundred Dollars ($200.00);

(3) the initial registration fee for a representative is Twenty Dollars ($20.00);

(4) the annual renewal fee for a representative is Ten Dollars ($10.00).

SUBCHAPTER I. FUNDING

Section 32.81. FUNDING.

(a) The cost of administration of this Chapter shall be included in the State budget allowance for the State Board of Education.

(b) Fees collected by the Administrator and deposited with the State Treasurer shall be used to help defray the cost and expense of administering the provisions of this Chapter.

Section 2. Chapter 250, Acts of the 41st Legislature, Regular Session, 1929 (Article 1415a, Vernon's Texas Civil Statutes, and Article 301a, Vernon's Texas Penal Code) is repealed.

Section 3. If any provision of this Act or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 4. This Act takes effect January 1, 1972.

Section 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

SIGNED BY: Preston Smith, Governor of Texas, on June 4, 1971